STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 6, 2002
v	No. 232801 Wayne Circuit Court
CHARLENE SEWELL, Defendant-Appellant.	LC No. 99-009677

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court then granted defendant's motion for new trial based on newly discovered evidence. On appeal, we reversed and remanded. See *People v Sewell*, unpublished order of the Court of Appeals, issued September 5, 2000 (Docket No. 227932), lv den 463 Mich 925 (2000). On February 16, 2001, the trial court ordered defendant to serve three years probation, with the first 90 days to be served in the county "boot camp." Defendant appealed as of right from this conviction and sentence. However, approximately one month later, the trial court resentenced defendant to one year in jail and two years probation, ostensibly for a probation violation, and defendant now challenges the resentencing in her amended brief on appeal. We affirm. This appeal is being decided without oral argument according to MCR 7.214(E).

This case arose out of an altercation on a street when the complainant was sitting on her front porch when a garbage truck – with defendant as a passenger – hit the complainant's car parked in the street. Defendant allegedly laughed at the complainant's protest and told her to "get over it." The complainant then had an epileptic seizure, and after she recovered, she waited for authorities to arrive. However, defendant continued to verbally taunt the complainant, and she returned the insults. Defendant raised her arm toward the complainant, who did likewise, and defendant swiped at the complainant's face with an object described as a silver object. The complainant sustained scarring from face and neck scratches, but received no stitches for them. At the hospital, she received treatment for the seizure only, and was released soon after.

As a threshold matter, we hold that we lack jurisdiction of defendant's claims involving her preferred counsel at the March 19, 2001, sentencing hearing or the propriety of the March 20, 2001, resentencing order. Defendant raises these challenges for the first time in her amended brief on appeal. Defendant claimed an appeal as of right in this matter from the February 16,

2001, probation order. Thus, we have no jurisdiction of claims involving the March 19, 2001, resentencing hearing or the March 20, 2001, resentencing order. See MCR 7.203(A); *Coburn v Coburn*, 230 Mich App 118, 123; 583 NW2d 490, rev'd on other grounds 459 Mich 874, 875 (1998).

The remaining issue on appeal is whether defendant's trial counsel was constitutionally ineffective for failing to secure the complainant's medical records, failing to call other witnesses, and failing to spend enough time on the case. See US Const, Am VI; Const 1963, art 1, § 20. This Court's review of an ineffective assistance of counsel claim is limited to the facts contained on the record. *People v Rodriguez*, ___ Mich App ___; ___ NW2d ___ (Docket No. 208845, issued April 26, 2002) slip op 13.[1] Whether a defendant has endured ineffective assistance of counsel presents a mixed question of fact and constitutional law, with facts reviewed under the clear error standard, and legal issues reviewed under the de novo standard. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The familiar ineffective assistance of counsel test requires a showing that: (1) counsel's performance fell below an objective standard of reasonableness under standard professional norms; (2) it is reasonably probable that, but for counsel's mistake(s), the outcome of the proceedings would have been different; and (3) the proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). The defendant bears a heavy burden of proving ineffective assistance of counsel because effective assistance is generally presumed. *LeBlanc, supra* at 578.

Defendant claims that if trial counsel had obtained the complainant's medical records following the altercation, this evidence would have disproved the element of intent to commit great bodily harm. We disagree.

This issue is largely governed by the law of the case doctrine. The doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). The doctrine is partially based on this Court's lack of jurisdiction to modify its own judgments except on rehearing. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). The doctrine applies to questions specifically determined in the prior decision and to questions necessarily determined to arrive at the prior decision; it does not apply to issues not raised for legal determination or to issues raised but not decided by the appellate court. See *People v Douglas (On Remand)*, 191 Mich App 660, 662; 478 NW2d 737 (1991). The doctrine also applies to issues resolved in interlocutory proceedings. *People v Freedland*, 178 Mich App 761, 770; 444 NW2d 250 (1989).

In the present case, this Court has already determined the issue whether discovery of the medical records required a new trial. See *Sewell, supra*. The trial court had granted a new trial based on purported newly discovered medical records evidence. On appeal, a panel of this Court held that the records did not contradict witness testimony that defendant struck the complainant

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[1] In the present case, the record reveals a hearing on defendant's ineffectiveness claim brought before and denied by the trial court. See *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

with a silver object. Consequently, the medical records did not change the fact that defendant's intent to do great bodily harm was still established. *Id.*; see also *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). Thus, this Court reversed the trial court's order and remanded the case for further proceedings. Because of that conclusion, and because this Court's previous decision is still the law of this case on subsequent appeal, *Douglas*, *supra* at 662, defense counsel's failure to obtain the records was not prejudicial to defendant. *Toma*, *supra* at 302; *Rodgers*, *supra* at 714; see also generally *People v Wiley*, 112 Mich App 344, 346; 315 NW2d 540 (1981).

Defendant also briefly claims that counsel was ineffective for failing to put defendant and other witnesses on the stand to establish a claim for self-defense or to establish that defendant did not have a weapon. According to the record before us, deciding not to put defendant on the stand was a matter of trial strategy that we will not disturb. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). The evidence presented showed that defendant instigated the verbal and physical altercation, and as trial counsel stated at the hearing, this unfavorable evidence would have been emphasized by the prosecution on cross-examination of defendant. Furthermore, it is unclear from the record what additional witnesses would have added to the trial testimony already presented. The failure to interview witnesses does not alone establish constitutionally inadequate preparation. *People v Caballero*, 184 Mich App 636, 640, 642; 459 NW2d 80 (1990). Other witnesses had already testified to observing the altercation, including defendant's role in it and the sighting of a silver object in her hand when she struck the complainant. Thus, failure to present additional witnesses evidence did not deprive defendant of a substantial defense that might have made a difference in the outcome of the trial. See *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grds 453 Mich 902 (1996); *Rodgers*, *supra* at 714.

Finally, defendant briefly claims that trial counsel was ineffective for spending only one and one-half hours preparing a defense. When claiming ineffective assistance due to trial defense counsel's failure to prepare the case, a defendant must show prejudice resulting from the lack of preparation. See generally *Rodgers*, *supra* at 714. Our review of the record reveals that defendant has not demonstrated prejudice. Therefore, we are not persuaded that relief is justified on this ground either.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell